RECENT IMPORTANT DECISIONS.

ATTORNEY AND CLIENT—AUTHORITY OF ATTORNEY—COMPROMISE.—Without express authority plaintiff's attorney compromised a cause of action, after suit started, and stipulated for a dismissal upon the merits. Plaintiff by a different attorney brought another action on the same cause. The compromise was pleaded in bar to which the plaintiff replied that said compromise was unauthorized and fraudulent. *Held,* that a general retainer gives no implied power to compromise except in case of emergency, and furthermore as the compromise was not followed by judgment, that the doctrine of collateral attack did not apply. *Nelson* v. *Nelson,* (1910), — Minn. —, 126 N. W. 731.

The courts do not all agree upon the authority of an attorney to compromise his client's claim. *Holker* v. *Parke,* 11 U. S. (7 Cranch) 436 and *Nolan* v. *Jackson,* 16 Ill. 272, are typical cases enunciating the American rule that an attorney has no such implied power. *Bonney* v. *Morrill,* 57 Me. 368; and *Levy* v. *Brown,* 56 Miss. 83 are contra. Generally then in this country such an implied power is not recognized, but it must be noted that an attorney can do all things that pertain to the remedy and not the cause. A dismissal should be carefully distinguished from a compromise. Non-residence of the client does not increase the authority. *Housenick* v. *Miller,* 93 Pa. St. 514. However in England an attorney is a general agent and can compromise. *Butler* v. *Knight,* 2 Exch. 109. But later cases qualify this by requiring good faith and reasonableness, and that the adverse party must be ignorant of any violation of authority. *Swinfen* v *Swinfen,* 18 C. B. 485 and *Whipple* v. *Whitman,* 13 R. I. 512. Under the American rule the client has two alternatives: first, to ignore the old suit and start another (see *Jones* v. *Inness,* 32 Kan. 177); or second, he can have the compromise set aside and the case reinstated (see *Dalton* v. *West End R. R. Co.,* 159 Mass. 221).

ATTORNEY AND CLIENT—DISBARMENT—REASONABLE DOUBT.—Proceedings to disbar appellants for misconduct in conspiring to obtain perjured testimony. *Held,* that disbarment proceedings are civil and not criminal and that allegations need be proved by only a preponderence of the evidence. *In re Darrow* (1910), — Ind. —, 92 N. E. 369.

Many text writers say that when in a civil case a criminal act is one of the allegations to be proved, the ordinary rule in civil cases applies and that a preponderence of evidence suffices. WIGMORE, EVIDENCE, § 2498. WIGMORE particularly says that the above is the rule in disbarment proceedings. But the decisions on this point are not harmonious. In Michigan disbarment proceedings are of a criminal nature and allegations should be clearly supported. *Matter of Baluss,* 28 Mich. 507. In Colorado, clear and convincing proofs are necessary. *People* v. *Pendleton,* 17 Colo. 544. In Utah more than a preponderence of evidence is required. *Re Evans,* 22 Utah 366. In Illinois the case must be clear and free from doubt. *People* v. *Harvey,* 41 Ill. 277.

In Kentucky testimony of a doubtful character is not sufficient. *Tudor* v. *Commonwealth,* 27 Ky. Law Reporter, 87. In New Jersey the evidence must be clear and convincing. *Re Noonan & Simpson,* 65 N. J. L. 142. *In the Matter of Attorney* (1 Hun 321) the disbarment is held to be penal and should be free from serious doubt. *In Matter of Mashbir* (44 App. Div. 632) guilt must be established beyond a reasonable doubt. When the courts say that a case must be free from doubt, if anything less than a reasonable doubt is meant the persuasion required is even greater than that necessary in a criminal prosecution. In short we find from the cases that the rule is in several states opposed to that enunciated in the principal case. On principle an anomalous situation arises if the rule of the principal case is to be followed in disbarment for commission of a felony. Many courts, among them the United States Supreme Court (see 3 AM. & ENG. ENC. OF LAW, 304, Ed. 2) hold that for indictable misconduct in an official capacity previous conviction is not necessary to warrant disbarment. In disbarment proceedings the attorney may demand a jury trial, as he has the right to do in Indiana, (*Reilly* v. *Cavanaugh,* 32 Ind. 214), and the jury may find the preponderance of evidence in favor of guilt. But if the attorney is afterward indicted and tried for the same offense, the jury may find that the evidence does not show guilt beyond a reasonable doubt. The result is that an attorney is disbarred for something of which a jury says he is innocent. It is submitted that, upon this assumed state of facts, the same measure of persuasion should be required in each trial, or else that the cases holding that a previous conviction is not a prerequisite to disbarment should be overruled.

BANKRUPTCY — CORPORATIONS SUBJECT TO INVOLUNTARY BANKRUPTCY — AMENDMENT OF 1910.—The Willis Cab and Automobile Co. was a corporation whose principal business was the keeping of a boarding stable to feed and care for horses for hire. An involuntary petition in bankruptcy filed against the corporation, in the District Court for the Southern District of New York, was dismissed, on the ground that the corporation was not one engaged principally in mercantile or trading pursuits within the meaning of § 4 b of the Bankruptcy Act of 1898. *In re Willis Cab & Automobile Co.* (1910), — D. C., S. D., N. Y. —, 178 Fed. 113.

Three other cases coming under the same section of the Statute were decided by the United States Supreme Court shortly previous to the foregoing one. The Toxaway Hotel Co., a corporation, duly formed under the laws of Georgia, was chartered to conduct hotels, inns, restaurants, etc., with their usual and necessary adjuncts. The company acquired and operated six hotels. Creditors filed a petition to adjudicate the corporation a bankrupt as having been principally engaged in mercantile and trading pursuits. *Held,* that the company was not amenable to the act. *Toxaway Hotel Co.* v. *Smathers* (1910), 216 U. S. 439. The Monongahela Construction Company was a Pennsylvania corporation, the principal business of which was to make and construct arches, walls, bridges, etc., out of concrete. It was held to be a corporation engaged principally in manufacturing within the meaning of § 4 of the Bankruptcy Act. *Friday* v. *Hall & Kaul*